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From:

Sent: Thursday, September 24, 2009 9:45:56 AM

To:

Cc:

Subject: RE: Is this a tefra partnership?

You should protect the statute both ways (TEFRA and Non-TEFRA), but this is most like subject to TEFRA. Section 6233(b) provides that TEFRA is mandatory if a partnership return is filed even if no partnership is ultimately found to exist. The only exception is if the small partnership exception applies. The existence of a pass-thru partner (the trust) makes this exception inapplicable. So TEFRA applies.

Furthermore, you don't need a profits interest to be a partner if you have a capital interest. If the trust actually contributed property and has a right to capital appreciation, it would meet the definition of a partner under the Supreme Court tests in Culbertson and Tower. Your facts do not indicate whether this is the case.